

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

U.S.D.A.  
2001 JUL 10 P 3:58

In re: ) PACA Docket No. D-01-0021  
)  
Janny Watermelon & Produce, Inc., )  
)  
Respondent ) Decision Without Hearing  
by Reason of Default

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Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) hereinafter referred to as "the Act," instituted by a complaint filed on June 28, 2001, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The complaint alleges that during the period of December 1999 through September 2000, Respondent Janny Watermelon & Produce, Inc., (hereinafter "Respondent") failed to make full payment promptly to six sellers of the agreed purchase prices, or balances thereof, in the total amount of \$195,352.54 for 30 lots of perishable agricultural commodities that it received, accepted and sold in interstate and foreign commerce.

A copy of the complaint filed on June 28, 2001 was sent to Respondent at 2438 Nostrand Avenue, Brooklyn, New York 11210 by certified mail on the filing date. On July 9, 2001, the Hearing Clerk wrote to the Postmaster in Brooklyn, New York requesting delivery date confirmation and the signature card. When no response was forthcoming, on September 18, 2001, the Hearing Clerk once again requested that the delivering post office provide delivery date confirmation and a signature. When no response was received, the complaint was sent once again to the same address by

certified mail on October 4, 2001. The delivery receipt for the complaint mailed on October 4th returned to the Hearing Clerk on October 30, 2001. It was signed on October 1, 2001 and date stamped by the post office on October 16th. The return receipt for the complaint mailed on June 28, 2001 was also subsequently returned to the Hearing Clerk with a signed receipt date of October 14, 2001 and post office date stamp of October 16, 2001.

The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall be issued without further investigation or hearing pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

#### Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the state of New York. Its business mailing address is 2438 Nostrand Avenue, Brooklyn, New York 11210.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 981714 was issued to Respondent on August 3, 1998.<sup>1</sup> This license terminated on August 3, 2001, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.
3. During the period of December 1999 through September 2000, Respondent purchased, received, and accepted in interstate and foreign commerce, from six sellers, 30 lots of fruits and vegetables, all being perishable agricultural commodities,

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<sup>1</sup> A typographical error in the complaint mistakenly identified Respondent's license number as 980214.

but failed to make full payment promptly of the agreed purchase prices, in the total amount of \$195,352.54.

Conclusions

Respondent's failure to make full payment promptly with respect to the 30 transactions described above, constitutes willful, repeated and flagrant violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. 499b), and the facts and circumstances set forth above, shall be published.

This Order shall take effect on the eleventh day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings thirty-five days after service hereof unless appealed to the Secretary by a party to the proceeding within thirty days after service as provided in Sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. 1.139 and 1.145).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.

this 15 day of July, 2002

jeff x. clyte  
Administrative Law Judge